

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Kburger, LLC, a California Limited
Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Kburger, LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Kburger, LLC owned Super Duper Burgers located at or about 346 Kearny St, San Francisco, California, in March 2021.

3. Defendant Kburger, LLC owns Super Duper Burgers ("Restaurant") located at or about 346 Kearny St, San Francisco, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein is
6 responsible in some capacity for the events herein alleged, or is a necessary
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
8 the true names, capacities, connections, and responsibilities of the Defendants
9 are ascertained.

10
11 **JURISDICTION & VENUE:**

12 5. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 6. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **FACTUAL ALLEGATIONS:**

24 8. Plaintiff went to the Restaurant in March 2021 with the intention to
25 avail himself of its goods or services and to assess the business for compliance
26 with the disability access laws. Not only did Plaintiff personally encounter the
27 unlawful barriers in March 2021, he wanted to return and patronize the
28 business but was specifically deterred several times due to his actual personal

1 knowledge of the barriers gleaned from his encounter with them.

2 9. The Restaurant is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
5 to provide wheelchair accessible dining surfaces in conformance with the ADA
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. The Restaurant provides dining surfaces to its customers but fails to
8 provide any wheelchair accessible dining surfaces.

9 12. One problem that plaintiff encountered is the lack of sufficient knee or
10 toe clearance under the outside dining surfaces for wheelchair users.

11 13. Plaintiff believes that there are other features of the dining surfaces that
12 likely fail to comply with the ADA Standards and seeks to have fully compliant
13 dining surfaces for wheelchair users.

14 14. On information and belief, the defendants currently fail to provide
15 wheelchair accessible dining surfaces.

16 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
17 personally encountered these barriers.

18 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
19 wheelchair accessible facilities. By failing to provide accessible facilities, the
20 defendants denied the plaintiff full and equal access.

21 17. The failure to provide accessible facilities created difficulty and
22 discomfort for the Plaintiff.

23 18. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 19. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 20. Plaintiff will return to the Restaurant to avail himself of its goods or
5 services and to determine compliance with the disability access laws once it is
6 represented to him that the Restaurant and its facilities are accessible. Plaintiff
7 is currently deterred from doing so because of his knowledge of the existing
8 barriers and his uncertainty about the existence of yet other barriers on the
9 site. If the barriers are not removed, the plaintiff will face unlawful and
10 discriminatory barriers again.

11 21. Given the obvious and blatant nature of the barriers and violations
12 alleged herein, the plaintiff alleges, on information and belief, that there are
13 other violations and barriers on the site that relate to his disability. Plaintiff will
14 amend the complaint, to provide proper notice regarding the scope of this
15 lawsuit, once he conducts a site inspection. However, please be on notice that
16 the plaintiff seeks to have all barriers related to his disability remedied. See
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
18 encounters one barrier at a site, he can sue to have all barriers that relate to his
19 disability removed regardless of whether he personally encountered them).

20
21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
22 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 23. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 24. When a business provides facilities such as dining surfaces, it must
22 provide accessible dining surfaces.

23 25. Here, accessible dining surfaces have not been provided in
24 conformance with the ADA Standards.

25 26. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 27. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 28. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
8 Code § 51-53.)

9 29. Plaintiff repleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
12 that persons with disabilities are entitled to full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishment of
14 every kind whatsoever within the jurisdiction of the State of California. Cal.
15 Civ. Code §51(b).

16 30. The Unruh Act provides that a violation of the ADA is a violation of the
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 31. Defendants’ acts and omissions, as herein alleged, have violated the
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
20 rights to full and equal use of the accommodations, advantages, facilities,
21 privileges, or services offered.

22 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiff, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.


2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: April 2, 2021

CENTER FOR DISABILITY ACCESS

By: 
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Attorney for plaintiff